

BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues  
Against:

RAMONCITO M. FABRA  
2750 Casey Street  
San Diego, CA 92139

Respondent.

OAH No. L2006110541

Case No. S-368

**PROPOSED DECISION**

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, at San Diego, California on January 12, 2007.

Deputy Attorney General Martin W. Hagan represented complainant.

Ramoncito M. Fabra (respondent) represented himself.

On December 5, 2006, the parties filed a "STIPULATION OF THE PARTIES REGARDING ADMINISTRATIVE HEARING" with the Office of Administrative Hearings. On January 12, 2007, the parties' stipulation along with other documentary evidence and oral testimony were received and the matter was submitted.

**FACTUAL FINDINGS**

1. The Statement of Issues against respondent was filed by Stephanie Nunez (complainant), while acting in her official capacity as the Executive Officer of the Respiratory Care Board (the board), State of California.
2. On January 17, 2006, respondent filed an application for a Respiratory Care Practitioner License with the board.
3. On June 16, 2006, the board notified respondent that his application for licensure had been denied based on his January 9, 2002 conviction of a crime involving sexual misconduct with a patient.

4. Respondent timely appealed the board's denial of his application and the instant hearing ensued.

5. On January 9, 2002, in the Case entitled *United States v. Ramoncito M. Fabra, Hospitalman (E-2)*, U. S. Navy, FOIA Case No. OJAG 20/F06081 (NMCM 200201696), before the Naval Legal Service Office, North Central Detachment, Great Lakes, Illinois, respondent was convicted, after entry of his guilty plea, of one count of violating the Uniform Code of Military Justice (UCMJ) Article 128 (Assault Consummated By a Battery With One Specification Thereunder), a crime involving sexual misconduct with a patient, which is directly and substantially related to the qualifications, functions and duties of a Respiratory Care Practitioner.

6. The facts and circumstances underlying respondent's January 9, 2002 conviction were as follows: On October 20, 2001, respondent was working in a military medical facility as United States Navy Corpsman. The medical facility was located at the Naval Great Lakes Training Center, Great Lakes, Illinois and the patient population consisted largely of Navy recruits. Respondent's duties included helping the doctors by checking patients' vital signs, changing dressings, etc. While changing the dressing on a male recruit's inner thigh, respondent touched the recruit's penis. Respondent told the recruit that he was "checking for swelling." (Exhibit 1C.) The recruit was shocked and did not immediately know what to do. After the dressing was changed, the recruit went to the bathroom and thought about what he should do. When the recruit returned to his room he told respondent not to touch him like that again. Respondent "apologized several times" and told the recruit that he had touched his penis because the recruit "look[ed] good." (Exhibit 1C.) Respondent "hung around" the recruit's room from about 6:00 p.m. until 8:00 p.m. During this time, respondent grabbed the recruit's penis two more times. The recruit lodged a complaint and after an investigation was completed respondent was charged with "Battery Sexual in Nature." (Exhibit 1C.)

7. The facts and circumstances underlying respondent's conviction reveal that the conviction was for a crime involving sexual misconduct with a patient and is a crime that is directly and substantially related to the qualifications, functions and duties of a licensed Respiratory Care Practitioner.

8. As a result of the 2002 conviction respondent received thirty days custody in the Brig, was reduced in pay grade to E-1, and received a Bad Conduct Discharge from the Navy.

9. Respondent presented his testimony and that of two other witnesses in support of his position that his application should be granted notwithstanding his October 20, 2001 sexual misconduct with a patient and the resulting, January 9, 2002, conviction.

10. Respondent admitted that he is "gay;" however, he asserted both during the hearing and in his application for licensure, that he only touched the recruit's penis so that he

could "get out of the Navy" and be able to return to school. Respondent's testimony is not credible. During the investigation of the 2001 incident, respondent initially denied touching the recruit's penis. This denial contradicts respondent's current position that he merely used the touching incident to facilitate his desire to get out of the Navy so he could return to school. If respondent truly touched the recruit's penis so that he (respondent) would be discharged from the Navy, he would have admitted the incident when initially confronted with the allegations. Instead, respondent denied the incident. There is only one reasonable conclusion that results from respondent's initial denial(s) considered in conjunction with the other evidence presented: respondent touched the recruit's penis to satisfy his (respondent's) own prurient interests.

11. During the instant hearing respondent acknowledged that by touching the recruit's penis in 2001, he (respondent) placed his interests before the best interests of his patient, he acted irresponsibly, and he exercised poor judgment in the care and treatment of his patient.

12. Since 2003, respondent has been working as a medical assistant in the Operation Samahan Clinic located in National City, California. Respondent's Clinic Manager (manager) testified on respondent's behalf. The manager testified that respondent told her about the incident in the Navy and expressed his "guilt, pain and shame." According to the manager, respondent is an honest person who "cares for other people."

13. Respondent also presented the testimony of a friend who has known respondent for "a number of years." The friend, who has worked as an administrator of a medical clinic in the past, testified that respondent is an honest and caring person.

## LEGAL CONCLUSIONS

1. Cause exists for denial of respondent's application pursuant to Business and Professions Code sections 3732, subdivision (b), 3750, subdivisions (d) and (g), and Title 16, California Code of Regulations, section 1399.370, subdivisions (a) and (e) because, as set forth in Findings 5, 6, 7, and 8, respondent was convicted of a crime substantially related to the qualifications, functions and duties of a Respiratory Care Practitioner.

2. Cause exists for denial of respondent's application pursuant to Business and Professions Code sections 3732, subdivision (b) and 3752.6 because, as set forth in Findings 5, 6, 7, and 8, respondent was convicted of a crime involving sexual misconduct.

3. Cause exists for denial of respondent's application pursuant to Business and Professions Code section 480, subdivision (a)(3) because, respondent's 2002 conviction, as set forth in Findings 5, 6, 7, and 8, involved acts, which if committed by a licensee would be grounds for revocation.

4. The evidence presented by respondent, as set forth in Findings 11, 12, and 13, is insufficient to establish respondent's rehabilitation. Consequently, it would be against the public's best interests to grant respondent's license application.

5. No evidence was presented in support of claimant's cost recovery prayer.

#### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The board's denial of respondent's application for licensure as a Respiratory Care Practitioner is upheld.

DATED: January 23, 2007



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ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings